IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY, THE SIXTH DAY OF JULY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE V.V.S.RAO

-

WRIT PETITION No.5941 of 2000

Between:

Anil Kumar Bhirwani S/o Sri Lakshmi Chand Bahirwani,
R/o 53, Jawahar Nagar Colony , Prenderghast Road , Secunderabad.

..... PETITIONER

AND

1 Municipal Corporation of Hyderabad Rep by its Commissioner,
C.C.Building Complex, Tank Bund Road, Hyderabad.
2 State of Andhra Pradesh Rep by Commissioner of Police,
Hyderabad.

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue any appropriate writ, order or direction, preferably a writ in the nature of Certiorari calling relating to Memo No. L& O /A4/1502/97 dt.23-3-99 issued by the 2nd respondent and to quash the same as being illegal, arbitrary and violative of Article 14 of the Constitution of India and consequently direct the 2nd respondent to forthwith issue a no objection certificate so as to enable the petitioner to do business of boarding and lodging in the premises situated at Plot No.53, Jawahar Nagar Colony Prenderghast Road , Secunderabad.

Counsel for the Petitioner: MR.P.VENUGOPAL

Counsel for the Respondents: GP FOR HOME

The Court made the following:

ORDER:

The petitioner's family allegedly owns a building with the plinth area of 7000 Sq.feet at P.G.Road, Secunderabad. The petitioner, therefore, made an application to the first respondent for issue of a trade licence to commence the business of boarding and lodging. As advised by the first respondent, the petitioner was required to obtain a clearance certificate from the second respondent. The petitioner obtained clearance from Fire Service Department. Thereafter, the petitioner approached the second respondent and sought necessary licence duly enclosing the clearance certificate issued by the first respondent and fire service department. By memo dated 23.3.1999, the second respondent rejected the licence. Assailing which, the present writ petition is filed.

The Commissioner of Police has filed a counter affidavit stating that the second respondent got enquired into the matter of granting licence through the Deputy Commissioner of Police (Traffic). It is also stated that the Traffic Police did not recommend the grant of licence after inspecting the building of the petitioner, as the same is located in 'T' junction and will create traffic congestion in the area.

Sri T.C.Dhanasekhar, learned Advocate representing the learned Counsel for the petitioner, Sri P.Venu Gopal (not present in the Court), submits that the second respondent passed orders in a mechanical manner without inspecting the premises and without conducting enquiry and therefore, the same is unsustainable. This is opposed by the learned Assistant Government Pleader.

The second respondent filed a detailed counter affidavit on 08.6.2000 duly serving a copy thereof on the learned Counsel for the petitioner. A reply affidavit is also filed by the petitioner. In the counter affidavit, a categorical statement is made that the Deputy Commissioner of Police (Traffic) inspected the hotel premises and did not make recommendation. On the basis of the same, the second respondent came to conclusion that as the hotel is located in 'T' junction and in residential area, it will create traffic congestion. This aspect of the matter is not specifically adverted to in the reply affidavit. The fact that the Deputy Commissioner of Police (Traffic) visited the area and then submitted a report to the second respondent remains uncontroverted. Be that as it is, when the licensing authority having regard to the facts and circumstances comes to a conclusion that trade licence to commence hotel

is rejected from the traffic point of view and also as the hotel is situated in residential area, the dispute if any cannot be resolved in a proceeding under Article 226 of Constitution of India. The law confers the power on the Commissioner of Police to grant licence for hotels and unless there is a gross arbitrariness, the view of the Commissioner of Police must receive the approval of this Court. Even otherwise, this Court can take judicial notice that in a city like Hyderabad if a hotel is allowed in an extent of 7000 Sq.feet that too in a residential locality, it would not only result in traffic congestion and traffic problems but also cause inconvenience for the residents of the locality.

The writ petition is devoid of merits and is, accordingly, dismissed.

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06.07.2005 **(V.V.S.RAO, J)**

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To

1 The Commissioner, Municipal Corporation of Hyderabad,
C.C.Building Complex, Tank Bund Road, Hyderabad.
2 The Commissioner of Police, State of Andhra Pradesh,
Hyderabad.

3 Two CCs to the Government Pleader for Home,

High Court Buildings, Hyderabad. (OUT)

4 Two C.D. Copies.